

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA  
THIRD DIVISION**

---

In re:

Mary C. Savat,

Debtor.

Case No.: 04-30023-DDO

Chapter 13 Case

---

**HEARING BRIEF OF CREDITOR ESSIELEANERA ROBERTS IN SUPPORT OF HER  
OBJECTION TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN**

Pursuant to this Court's Order of June 30, 2004, creditor Essieleanera Roberts submits this Hearing Brief in support of her objection to the confirmation of debtor Mary C. Savat's Chapter 13 Plan.

**FACTS**

Ms. Savat was married to Jeffrey A. Knutson, the sole shareholder of J.A.K. Enterprises, a Minnesota corporation engaged in, *inter alia*, the residential construction business. From at least 2001 until 2003, Ms. Savat was an agent of J.A.K. Enterprises and handled the company's financial affairs.

In September 2001, Ms. Roberts hired J.A.K. Enterprises to rebuild her residence, which had been partially destroyed by fire. Over the course of the project, J.A.K. Enterprises took a larger profit than it was entitled to, failed to pay subcontractors and suppliers, used cheaper materials than those originally agreed to by the parties, and ultimately abandoned the project in August 2002.

In December 2002, Ms. Roberts brought a lawsuit in Hennepin County District Court against J.A.K. Enterprises, Mr. Knutson, and Ms. Savat for, *inter alia*, violations of Minnesota

Statute § 514. 02. After more than a year of litigation, Ms. Roberts obtained the following relief from Ms. Savat and her codefendants: (1) a judgment against J.A.K. Enterprises in the amount of \$75,000; (2) the return of a vehicle purchased with her funds; and (3) a judgment against Mary Savat in the amount of \$182,457.30.

In the District Court action, Ms. Savat attempted to mislead the court on several occasions. First, Ms. Savat submitted to the District Court an affidavit in which she claimed that she did “not receive a salary, *dividend*, loan repayment, *capital distribution* or *any type of financial compensation* from JAK” Enterprises and that she was not an agent of J.A.K. Enterprises. These sworn statements were false. Ms. Savat took over \$100,000 in dividends or distributions and nearly \$10,000 in cash from J.A.K. Enterprises and handled the majority of the company’s financial affairs. Thus, Ms. Savat received ample financial compensation from J.A.K. Enterprises and, at a minimum, acted as an agent of the company.

Ms. Savat also attempted to mislead the District Court by failing to disclose assets to the court when ordered to pursuant to an Order for Attachment. In April 2003, Ms. Savat and her codefendants made a disclosure of assets to the District Court. The District Court found this disclosure to be insufficient and ordered that a more complete disclosure be made.

On May 30, 2003, Ms. Savat and her codefendants made a second disclosure of assets. This, too, was incomplete. When Ms. Roberts challenged this second disclosure, Ms. Savat admitted that she had not disclosed a \$3,000 sewing machine, though the sewing machine was her most valuable household asset. Ms. Savat also failed to disclose this sewing machine despite having previously disclosed to the District Court another sewing machine valued at \$50. Ms. Savat also admitted that she had not previously disclosed to the District Court a \$1,200 computer

and a printer/fax/monitor purchased recently, though these too ranked among her most valuable household assets.

On November 13, 2003, the District Court issued an Order setting the case for trial the week of February 16 or 23, 2004. On January 5, 2004, Ms. Savat filed her Voluntary Petition for Chapter 13 protection to avoid having to go to trial in the District Court action. Ms. Savat had not had any material change in her financial condition just prior to filing her Voluntary Petition.

In this Court, Ms. Savat continued her pattern of failing to disclose assets and misstating her financial condition. For example, Ms. Savat owns and is the beneficiary of life insurance policies that she did not disclose in her Voluntary Petition. In addition, Ms. Savat did not disclose in her Voluntary Petition electronic equipment and an alleged sale of her \$3,000 sewing machine. As in the District Court action, it was only after Ms. Roberts challenged her disclosures that Ms. Savat amended her Voluntary Petition.

Finally, in her Voluntary Petition, Ms. Savat grossly understated the amount of her debt to Ms. Roberts. Ms. Savat listed the debt at \$50,000, when the debt was in fact \$182,457.30, as found by the District Court.

### **LEGAL STANDARD**

To be confirmable, a chapter 13 plan must satisfy the requirements of 11 U.S.C. § 1325. The Plan fails to comply with 11 U.S.C. § 1325(a)(3). Consequently, this Court should not confirm the Plan.

#### **I. THE DEBTOR CANNOT MEET THE GOOD FAITH REQUIREMENT OF 11 U.S.C. § 1325(a)(3)**

In *In re Soost*, 290 B.R. 116 (Bankr. D.Minn. 2003), the Court identified the factors relevant to the determination of whether a debtor has proposed a Chapter 13 plan in good faith.

Though “the court must consider the totality of the circumstances” on the question of good faith, the following objective factors should be considered:

the debtor's candor and honesty with the court in the bankruptcy case; the conformity of the plan with the policy goals of the bankruptcy laws; the debtor's expressed attitude, past and present, toward the legal process and its values; the extent to which the debtor's past conduct conformed with the substantive law that governed his relationship(s) with creditor(s); and the debtor's past conduct in relation to the integrity of the legal system.

*In re Soost*, 290 B.R. at 122 (citations omitted). The court may also “consider the fundamental fairness of the debtor's proposed treatments of creditors' claims.” *Id.* In sum, the relevant inquiry regarding good faith is “whether the debtor has stated his debts and expenses accurately; whether he has made any fraudulent misrepresentation to mislead the bankruptcy court; or whether he has unfairly manipulated the Bankruptcy Code.” *Education Assistance Corp. v. Zellner*, 827 F.2d 1222, 1227 (8th Cir.1987).

Here, Ms. Savat cannot show “good faith” because (1) she unfairly manipulated the Bankruptcy Code by filing her voluntary petition solely to avoid a trial in the District Court action; (2) she has attempted to deceive this Court by failing to disclose assets and misstating her debt to Ms. Roberts; (3) she acted with deceit in the District Court action by attempting to hide assets from the Court and Ms. Roberts and by submitting an affidavit containing false statements; and (4) she violated Minnesota law in her pre-litigation dealings with Ms. Roberts.

**a. The Debtor Filed Her Voluntary Petition for the Sole Purpose of Avoiding a Trial in the District Court Action**

“[T]he Debtor’s motivation in seeking chapter 13 relief is a factor that must be considered when determining good faith, and where a debtor’s behavior exhibits a pattern of manipulation, such conduct should not be rewarded in bankruptcy.” *In re Banks*, 248 B.R. 799, 805, n. 2 (B.A.P. 8th Cir. 2000) (*citation omitted*). Here, Ms. Savat filed her petition

approximately five weeks before the trial date in the District Court action without any material change in her financial condition prompting the filing. The sole reason for her filing was to prevent Ms. Roberts from liquidating her claim in the District Court action. Thus, the Debtor's bankruptcy filing was an attempt to thwart Ms. Roberts, not repay her. See *In re Larson*, 245 B.R. 609, 616 (Bankr. D. Minn. 2000) (citing *In re Mattson*, 241 B.R. 629, 637 (Bankr. D. Minn. 1999)). Otherwise put, the Debtor's filing had nothing to do with formulating a repayment plan and everything to do with avoiding her obligation to testify about her misappropriation of over \$100,000 of Ms. Roberts' money. Such conduct evidences a "pattern of manipulation" and thus weighs against a finding of "good faith." *In re Banks*, 248 B.R. at 805, n. 2.

**b. Ms. Savat Has Misrepresented Her Debts and Assets to This Court**

"[T]he debtor's candor and honesty with the court in the bankruptcy case" is a factor probative of whether the Debtor has filed for bankruptcy in "good faith." *In re Soost*, 290 B.R. at 122 (citations omitted). In her Voluntary Petition, Ms. Savat failed to disclose that she owns and is the beneficiary of life insurance policies, and failed to disclose electronic equipment and an alleged sale of her \$3,000 sewing machine. As in the District Court action, it was only after Ms. Roberts challenged her disclosures that Ms. Savat amended her Voluntary Petition.

Ms. Savat also grossly understated the amount of her debt to Ms. Roberts. Ms. Savat listed the debt at \$50,000, when the debt was in fact \$182,457.30, as found by the District Court. Thus, the \$50,000 claimed by Ms. Savat as the debt to Ms. Roberts is less than one-third of the actual debt, and her proposed plan lacks "fundamental fairness." *In re Soost*, 290 B.R. at 122.

**c. Ms. Savat Attempted to Deceive Ms. Roberts and the Court in the District Court Action**

"The debtor's expressed attitude, past and present, toward the legal process and its values" and her "past conduct in relation to the integrity of the legal system" demonstrate the

Debtor's complete disregard for court rules and a willingness to engage in deceit when it serves her interests. *In re Soost*, 290 B.R. at 122. In the District Court action, Ms. Savat repeatedly refused to disclose assets to the court after Ms. Roberts had obtained an Order for Attachment of Ms. Savat's property. When the District Court ordered Ms. Savat to disclose her assets, she twice failed to disclose a \$3,000 sewing machine (her most valuable household asset at the time) and a \$1,200 computer, though she had previously disclosed to the District Court another sewing machine valued at \$50.

Ms. Savat also attempted to deceive the District Court when she submitted an affidavit claiming that she did "not receive a salary, *dividend*, loan repayment, *capital distribution* or *any type of financial compensation* from JAK" Enterprises. (emphasis supplied.) This sworn statement was false, as evidenced by Ms. Savat's taking in excess of \$100,000 in dividends or distributions from J.A.K. Enterprises and another nearly \$10,000 in cash from the company. In sum, the Debtor's "expressed attitude, past and present, toward the legal process and its values" is one of manipulation and deceit, and she cannot make a showing of "good faith." *In re Soost*, 290 B.R. at 122.

**d. The Debtor Has Violated Minn. Stat. § 514.02**

Also relevant to the good faith determination is whether the "debtor's past conduct conformed with the substantive law that governed his relationship(s) with creditor(s)." *In re Soost*, 290 B.R. at 122. Here, the Debtor's relationship with Ms. Roberts was governed by the Minnesota common law and, most importantly for purposes of this objection, Minn. Stat. § 514.02. This Minnesota statute makes it unlawful for a contractor to fail to use the proceeds of payments made to it to pay for labor and material contributed to the improvement of property, knowing that the cost of the labor performed or material furnished remained unpaid. In addition,

Minn. Stat. § 514.02 imposes liability upon a person who knowingly receives benefits from the misappropriated funds and provides for an award of attorneys' fees and costs to the prevailing party. In the District Court action, the court entered judgment against Ms. Savat for \$182,457.30, based in part on Ms. Savat's violation of Minn. Stat. § 514.02. Thus, it is a settled question whether Ms. Savat violated "the substantive law that governed h[er] relationship" with Ms. Roberts, and that violation of law also weighs against a finding of good faith. *In re Soost*, 290 B.R. at 122.

#### CONCLUSION

WHEREFORE, Ms. Roberts respectfully requests that this Court deny confirmation of the Plan.

Dated: August 31, 2004

SHULMAN & DORNBOS PLLC



David L. Shulman (#260721)  
William E. Dornbos (#029049X)  
Shulman & Dornbos PLLC  
1005 W. Franklin Ave., Suite 3  
Minneapolis, MN 55405  
Tel: 612-870-7410  
Fax: 612-870-7462